IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 80 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HIRALAL MOTIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 80 of 2002

MR AD SHAH for Petitioners No. 1-6

MR VIPUL PANCHOLI, Ld. APP for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 11/01/2002

ORAL JUDGEMENT

Rule. Mr. Pancholi learned APP waives service of rule on behalf of the respondent-State.

Heard Mr. Shaurin Shah learned counsel for the

petitioners and Mr. Pancholi learned APP for the respondent-State.

By means of filing this application under sec. 482 of Cr.P.C. the petitioners have prayed for quashing the crime registered against them in the Bharuch A-Division Police Station for the offence punishable under sec. 143, 147, 304 of IPC vide CR No. I-238/2001.

Considering the facts reflected from the FIR, learned APP Mr. Pancholi has resisted this petition mainly on two points. The first submission of Mr. Pancholi is that this is a case wherein a person who was going to cast his vote in the democratic country was assaulted and this is a case wherein a person is died because of the assault made on him and the petitioners had approached for bail before the competent court and being unsuccessful have attempted to get the crime quashed by filing this application. While arguing for the State, Mr. Pancholi has pointed out that deceased was a father of one of the contesting candidate in panchayat election, aged about 60 years and the petitioners ought not to have obstructed or assaulted him and the accused should be left to trial till they are acquitted by the competent court.

Mr. Shah learned counsel appearing for the petitioner has taken this court through the papers of investigation and the opinion expressed by the Doctor who has performed autopsy. It is clear from the record available that the person has died because of heart failure and there are no visible injuries found on the body of the deceased. Some abrasions are found on the body of the deceased. It is contended by Mr. Shah that the action of the Police in registering the offence punishable under sec. 304 of IPC is in! total violation on the well recognized principles of criminal jurisprudence and death of deceased cannot be said as culpable homicide within the meaning of IPC. Mr.Shah has submitted that in such a matter, absolutely on moral ground the petitioners should not be asked to face serious trial punishable for the offence under sec. 304 of IPC. The prosecution is supposed to bring before this Court prima-facie that there is nexus between the act of the accused and the death of the deceased. For proving the culpable homicide amounting to murder, it is absolutely necessary to establish that there is a direct nexus between the act and cause of that act namely death. Mr. Shah has placed reliance on the decision of this Court delivered in Criminal Misc. Application NO. 6084/1999 (Coram: CK Buch, J.) dated 5.11.99 wherein the

submissions of learned counsel Mr. AD Shah for the petitioner was accepted and the charge levelled against the concerned accused for the offence punishable under sec. 302 of IPC was turned down. Submissions of Mr. Shah was mainly based on the decision reported in 1970 SCC (Cri.) p.532 in the case of Jani Gulab Shaikh vs. The State of Maharashtra. This decision was cited before this Court when a Criminal Misc. Application No. 4223/98 had been argued and decided on 23.9.1999 and this Court has observed while dealing with the said application that "to sustain grievous injury is something different than to inflict the grievous injury". Medical opinion expressed by the doctor in this case is the clear answer to the case of the prosecution and it would not be legitimate to tell the accused to undergo and face criminal trial for the offence punishable under sec. 304 of IPC. I would like to refer and reproduce the observations of the Doctor made in last column of the P.M. Note, which reads as under:

"Provisional cause is shock due to myocardial inferaction."

I have considered the remarks made in column no. 20 of the P.M. Note, which says as under:

"It's weighing 375 gms. Heart enlarged with fatty deposition over pericardium and epicardium lateral & intra lateral branches of left coronary artery on section shows presence of blood clot with area of pallor about 3 cm at both area suggestive of necrosis. Blood clot in cavity present at lt. side."

Mr. Shah has rightly submitted that the heart of the deceased can be said to be reasonably enlarged. Without appreciating the evidence, this Court can legitimately infer that the act of assault even if it is accepted as averred by the prosecution was not the result of the death of the deceased, and therefore, the charge levelled against the present accused concerned for the offence under sec. 304 of IPC shall have to be quashed. However, the fact remains that the accused persons had obstructed the deceased from casting the vote as per the story of the prosecution and the deceased was assaulted and, therefore, it shall have to be observed that the accused persons if have committed any lesser offence punishable under IPC or the law as to Election and if the Investigating Agency founds that these petitioners or any of them can be held guilty of the said offence, than the Investigating Agency can take appropriate steps and file

appropriate report. The offence under sec. 143 and 147 are the offence against the State, so order of this Court would not come in the way of the Police, if the Police intends to charge-sheet the accused for the said offence along with other offence if the same is found to have been committed.

I would like to quote relevant part of the decision of this Court rendered in Criminal Misc. Application No. 6084/99 because the same squarely applies to the present set of facts:

"Medical opinion clearly shows that heart was fat and enlarged and deceased died because of the cardiac arrest and it has nothing to do with the injury which is attributed to the present petitioner. Suspicion cannot take place of proof and nothing at this stage can be assumed or presumed against the petitioner in absence of any speaking circumstances or evidence on record. In view of the above facts and circumstances, as rightly averred by the petitioner, he is not liable to be arrested merely on a suspicion of complicity in of offence. There must be some reasonable justification. It is rightly argued that arrest must have element of necessity and justification both. The arguments made by learned counsel which formally admitting applications and granting formal protection to the petitioner, has become reality on going through the papers of investigation. As there is no element of prima-facie case or evidence which can connect the accused with the offence punishable under sec. 302 of the IP Code, criminal proceedings initiated against the petitioner accused no. 3 require to be quashed and set aside. However, it is observed that if the accused has committed any lessor offence namely offence punishable under sec. 323 of the IP Code, and any material connecting the same is found by the Investigating Agency, it would be open for the Investigating Agency to take appropriate steps viz. to file a report accordingly or it can direct the original complainant to take proper recourse treating the complaint against the accused as a complaint of non-cognizable case. I agree that the petitioner has impliedly submitted that maximum the police can take cognizance of the offence punishable under sec. 325 of IP Code, but in view of the

facts and circumstances of the case, the petitioner, prima-facie, cannot be said to have committed an offence under sec. 325 of the IP Code."

For the reasons aforesaid, this application is allowed. The complaint being CR NO. I-238 of 2001 registered with A-Division Police Station, Bharuch for the offence punishable under sec. 304 of IPC is hereby quashed and set aside qua the present petitioners. However, it is clarified and observed that if any cogent and convincing evidence is available with the Investigating Agency to connect the petitioners with any offence punishable under IPC or the Election Law, it would be open for the Investigating Agency to take appropriate steps in that regard.

The Investigating Agency is directed to submit the necessary report before the concerned Ld. Judicial Magistrate First Class.

Rule made absolute accordingly. DS Permitted today.

(C.K. BUCH, J.)

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